



March 5, 2001

Mr. John M. Hill  
Cowles & Thompson  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR2001-0842

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144676.

The Town of Addison (the "town"), which your firm represents, received a request for "a copy of the full offense report" in a specified case. You indicate that you have released to the requestor a copy of the front page of the submitted offense report. You assert that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Before reaching the claimed exceptions, we must address certain procedural matters. Among other requirements, section 552.301(b) of the Government Code provides that a governmental body must ask for a decision of this office "and state the exceptions that apply" no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state that the town received the written request on December 8, 2000. The tenth business day after that date was December 22, 2000.<sup>1</sup> By correspondence received by this office on that date, you asserted sections 552.103 and 552.108, but you did not assert the section 552.101 exception in that correspondence. You first asserted section 552.101 in subsequent correspondence dated January 3, 2001. In addition, section 552.301(e) of the Government Code provides that the town was required to provide the

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<sup>1</sup>In calculating deadline dates in this decision, because we have not been advised otherwise, we must assume that the town was open for business on the same days that this office and other state agencies were open for business during the period in question. Thus, for the period in question and other than Saturdays and Sundays, we assume the town was closed for business only on December 25, 2000, December 26, 2000, and January 1, 2001.

to this office no later than the fifteenth business day after the date of receiving the written request:

- (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- (B) a copy of the written request for information;
- (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and
- (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(A), (B), (C), (D). The fifteenth business day after the town received the written request was January 3, 2001. Although the correspondence in which you provide the above information is dated January 3, 2001, one copy, sent by facsimile, was not received by this office until January 4, 2001. Another copy, sent by U.S. mail, was not received by this office until January 8, 2001 and contains a postal meter imprint dated January 4, 2001. *See* Gov't Code § 552.308(a)(1). We therefore conclude the town did not comply with the fifteen business day deadline of section 552.301(e) of the Government Code.

If a governmental body does not request a decision of this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that a compelling reason sufficient to overcome the section 552.302 presumption of openness may exist where the information is confidential by law or its release implicates third party interests. *See, e.g.,* Open Records Decision No. 150 (1977). But sections 552.103 and 552.108, asserted by the town on its own behalf, are discretionary exceptions that do not demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness.<sup>2</sup> We thus conclude that none of the information

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<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive

may be withheld under section 552.103 or section 552.108. Because section 552.101 may provide a compelling reason under section 552.302, we next address the section 552.101 assertion.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision Nos. 393 (1983). The submitted offense report pertains to an alleged sexual assault and identifies the victim. Thus, information in the report that identifies the victim, including front page information, is confidential with respect to the general public under section 552.101 in conjunction with the common law right to privacy.

The present requestor, however, is the victim's attorney. Section 552.023 of the Government Code provides that a "person *or a person's authorized representative* has a special right of access, beyond the right of the general public, to information . . . that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a) (emphasis added). We therefore conclude in this instance that the victim identifying information is not excepted from disclosure by section 552.101 in conjunction with the common law right to privacy.

In summary, the town must release to the requestor the submitted information, in its entirety, pursuant to section 552.302 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

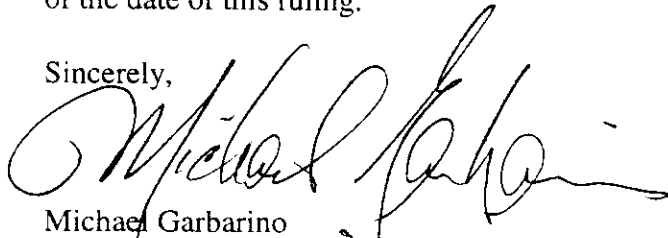
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 144676

Encl. Submitted documents

cc: Mr. William F. Blankenship  
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(w/o enclosures)